1877
(L.R.)

File No. 12
Serial No. 1-9.

Sub: Rule Regarding Bill relating to Alluvial lands and abandoned River beds

110

G. R. S. IX-5]

Previous references. 1877

~~191~~.

(LR.)

File No. 12

Serial Nos. 1—9

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1—9

Major ~~Part~~ B for 30th Dec. 1878.

SUBJECT.

Rules regarding Bill relating to Alluvial Islands and abandoned River Beds.

Indexed.

W D 88—GPB—50,000—24-7-16

A. 372.

Memo

On the Bill relating to alluvion

s. 4. Right to alluvial land on bank or shore.

The general rule embodied in this section is, that where an accession or Enlargement of land is caused by operation of water the increase or alluvial becomes the property of him to whose soil it adheres. But supposing a definite and ascertainable portion of one's property, or a projecting part of one's land, with some trees and buildings thereon, is swept away and thrown upon another's

property, I do not think it is fair to apply the general rule in such a case. If one could identify his property it belongs to him wherever it goes, provided he claims it within the period prescribed by limitation. I think the proposed Enactment should provide for a case similar to the above.

2. The term "sea shore" is not defined in the Bill and it seems desirable to do so with reference to grants of land bounded on the sea, or a river, so as to limit

His appeals to Europeans for land which belongs to Europeans are always successful, and elsewhere

the rights of the grantees.
The boundary limit must
be either at ordinary high
or low water mark, and
not subject to alternate
change with the flux
and reflux of the tide.

3. The other provisions
of the Bill seem unob-
jectionable.

Thomas Boothby Chitty
14/11/78.

I hereby certify this Bill
as my opinion affecting
Imperial Interests.
Royal Thos. Bill has
Captain's Cert to Steam
between Ports of the United
Kingdom Bill. See Schedule
of the Merchant Shipping

[illegible]

16.11.78. Entered in the Register.

Ex Govt. of India Legislative Dept. No. 6653 of 18th March/78.

12

Intimation 373

M Leeds.

Sir

15/11

To be placed in File.

O. or M. /84

No. 1 — —

Date 6-3-98

From Commerce

LR
12-7

filed
20-10-81

2

a 次

127

2

O. or M.

25

No. 2345/28

Date 26-6-78

From

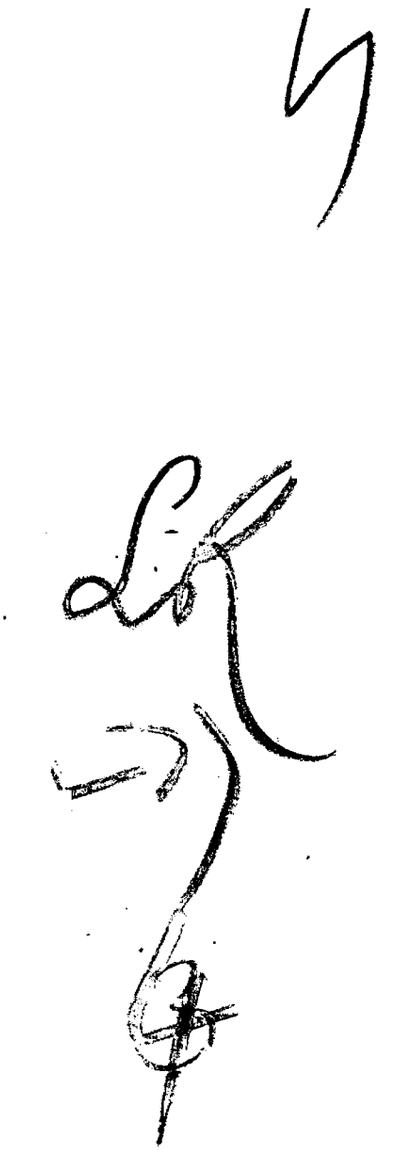
or

To Commercial

filed
20-10-81

127

3



1557 1878. 99 O.3349/206

From The Ind. Commissioner of Mysore.

To

Secretary to Chief Commissioner,
General Department.

Dated 28 October 1878

Despatched 29 " "

Received 29 " "

~~Reg~~ 30 " "

Enclosures No.

General No. 2578 / No. 232 1878—79.

In reply to his D.O. 5435/498 of 22 instant, states that he is not in a position to give an opinion of any value on the provisions of the Bill relating to Alluvion Islands and abandoned river-beds.

To Ass Sec - Do any remarks occur to you on the provisions of this Bill?

JPs

Please see minute below.

14/11/78.

11/11/78

Co. 2548
232

6

Mysore Judicial Commissioner's Office
Bangalore 28th October 1878.

From

J. D. Sandford Esquire
Judicial Commissioner
of Mysore

To

The Secretary to the
Chief Commissioner
of Mysore

Sir,

In reply to your No. 5735/498
of the 23rd instant, forwarding for my opinion Copy of a Bill to define and amend the law relating to alluvion Islands, and abandoned river-beds, I have the honor to state that, unfortunately, I have no experience or practical knowledge of the subject, and am not, consequently, in a position to give an opinion of any value on the provisions of the Bill.

I have the honor to be
Sir
Your Most Obedt. Servant

J Sandford
Judicial Commissioner

A.P.

A

BILL

TO

Define and amend the law relating to alluvion, islands and abandoned river-beds.

WHEREAS it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows:—

Preamble.

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Alluvion Act, 1879."

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Repeal of enactments.

2. The Acts, Regulation and Rules mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act.

Interpretation-clause.

3. In this Act—

Contra 4 W. R. 41.
14 W. R. 362.

"island" includes ~~a sandbar and any other accumulation of land; it also includes~~ land arising in a river or lake, submerged in the wet season and visible only in the dry season; but it excludes land in tidal rivers, tidal lakes or the sea, submerged by the ordinary flow of the tide ~~and visible only at low water~~;

17 W. R. C. R. 173.

Angell, 6th ed., p. 16, note 2.

"thread of the stream" means (*a*) the middle line of the main-stream during the dry season, or (*b*) the middle line between what are the shores on each side when the water is at its average height, neither swollen by flood, nor shrunk by drought, or (*c*) the middle line of the particular channel in which the island referred to arises;

"owner" means, in the case of a bank or shore held on raiyatwárí tenure, the Crown: in the case of a bank or shore forming part of land situate in the Presidency of Bombay and wholly or partially exempt from the payment of land-revenue, or held under a grant or lease fixing the Government demand in respect thereof in perpetuity, the holder of such land; and in the case of a bank or shore held by a village community in the Panjáb, such community;

"sea" includes bay, inlet, creek and arm of the sea

3 W. R. 95.
6 Ben. 343.

and a channel is said to be "fordable" when it does not exceed five feet in depth in the dry season and throughout the twenty-four hours.

II.—Alluvion.

4. Where, from natural causes, land forms gradually on the bank of a river or on the shore of the sea, of a lake, or of an island, either by accumulation of material or by recession of the river, sea or lake, the owner of the bank or shore shall be entitled to the land so formed:

Right to alluvial land on bank or shore.

Ben. Reg. XI of 1825, s. 4.

As to lakes, see Angell § 59.

Ben. Act IV of 1868, s. 2.

Provided that, where the land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed.

Lopez v. *Muddun Thákur*, 5 B. L. R. 521.

III.—Islands.

5. Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, if when the island is first formed, the channel between the bank or shore and such island is not fordable at any point, the Crown is entitled to such island:

Right to islands where channel is not fordable.

Ben. Act IV of 1868, s. 4.

Provided that, where the island is formed on a site of which a private person is proved to be the owner, such person is entitled to the island.

6. If, when an island is first formed as aforesaid in a river, the sea or a lake, the channel between the bank or shore and such island is fordable at any point, the following rules shall take effect (namely):

Right to other islands.

Contra 9 W. R. 401, 12 Moore I. A. 136.

(*a*) Where the island is formed in the sea or a lake, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake opposite the island:

(*b*) Where the island is formed in a river and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on that side are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island:

Angell, *Watercourses*, 6th edition, p. 49, citing Shaw, C. J.

(*c*) Where the island is formed in a river and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the river opposite the island:

Angell, *ubi supra*. Kent. Comm., 11th edition, III., 542.

(*d*) Provided that, where the island is formed on a site of which a private person is proved to be the owner, such person is entitled to the island.

Explanation.—"Frontage" means the right line connecting the corners of each holding where they strike the sea, lake or river, and the frontage is "opposite" the island when a perpendicular erected at any point thereof in the plane of the sea, lake or river, intersects the island.

7. If a river in forming a new arm divides and surrounds land belonging to the owner of the bank, and thereby forms an island, such owner is entitled to the island.

Islands formed by division of rivers.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill is intended to form a chapter of the Indian Civil Code, and its object is to state, in a concise, accurate and accessible form, the law relating to the ownership of alluvial lands, islands and abandoned river-beds. In Madras, Bombay and Burma there is no statutory law on the subject: in Sindh there are only some executive rules which are held to have the force of law: in the rest of British India the law is contained partly in legal text-books, partly in the Bengal Regulation XI of 1825, and the Bengal Act IV of 1868, sections 2 and 4, but chiefly in the numerous decisions of the High Courts and the Judicial Committee of the Privy Council with which the former enactment is encrusted.

Regulation XI of 1825 provides rules for land gained from a river or the sea by gradual accession; for avulsion; for islands formed in navigable rivers and the sea; for islands formed in "small and shallow rivers, the beds of which with the jalkar [or] right of fishery may have been heretofore [*i.e.*, before 26th May, 1825] recognised as the property of individuals." But it does not provide for the case when an alluvial deposit takes place on a site of which, though it has been submerged, the ownership is ascertained. It declares that an island formed in a navigable river belongs to the adjoining proprietor or to the Crown, according as the channel between it and the adjacent land is fordable or unfordable. But it does not define "fordable;" nor state the time with reference to which the question of fordability or non-fordability is to be decided, nor show when an island in a tidal river or the sea can be said to be formed. It declares that an island formed in a navigable river shall, where the channel is fordable, be an accession to the land "of the person or persons whose estate or estates may be most contiguous to it." But this does not, apparently, provide for cases where the island is partly on one side and partly on the other of the thread of the stream, nor for cases where there are several riparian owners, and the island cannot be said to be nearer to the property of one than to that of another.

The Bill attempts to supply these defects as follows:—

It declares, in accordance with the decision of the Judicial Committee in *Lopez* v. *Muddun Thákur*, that when land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed. It declares that a channel is "fordable" when it does not exceed five feet in depth in the dry season and throughout the twenty-four hours; and when a channel which is not fordable when the island appears becomes fordable afterwards, it fixes the first appearance of the island as the date with reference to which the question of fordability or non-fordability is to be determined. The subsequent junction of the island to the main-land will thus not affect the right of the Crown. Lastly, it includes in the term "island" land arising in a river, submerged in the wet season and visible only in the dry, but excludes from that term land in a tidal river or the sea which is submerged by the ordinary flow of ~~the~~ tide ~~and visible only at low water~~.

As regards the rights of riparian owners to islands, the Bill applies the same rules to an island formed in the sea, a lake or a navigable river, when the channel between it and the adjacent land is fordable at any point, and to an island formed in a river which is not navigable. These rules are as follows:—

"Where the island is formed in the sea or a lake, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake opposite the island.

"Where the island is formed in a river and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on that side are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island.

"Where the island is formed in a river and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the river opposite the island."

And as the same definition of "thread of the stream" will not suit all the rivers in British India, or even all the parts of the same river, three definitions of this expression are given, and the Local Governments are empowered to declare which of them shall in each case be applicable.

The Regulation is also defective in not providing for the case of what Roman lawyers termed *agri limitati*. When land is granted by the State in a plot with a specified area, and such land is enlarged by alluvion, the increment should not become the property of the owner of the plot. The Bill (section 10, clause (*c*)) contains a provision to this effect, which, it is believed, will be especially useful in Bombay.

When a river suddenly forms a new course, abandoning its ancient bed, the Bill declares that the owners of the ancient banks are entitled to the ancient bed in proportion to their respective frontages. This is in accordance with the existing law (Suth. W. R., 1864, p. 103), and it seems less likely to encourage litigation than would be the provision (found in some systems) that the owners of the land newly occupied shall take the ancient bed, each in proportion to the land of which he has been deprived.

Where a bank or shore is held on raiyatwárí tenure, the Crown is, for the purposes of the Bill, to be deemed the riparian owner. The effect will be, in Madras and Burma, to continue the present practice, according to which the Government is, as a rule, entitled to alluvial lands and to islands arising in rivers. In the Bombay Presidency, where a bank or shore is wholly or partially exempt from revenue, or is held under a grant or lease fixing the Government demand in perpetuity, the holder will be deemed the riparian owner.

The Bill advisedly leaves untouched the law relating to the assessment of alluvial lands and lands diminished by diluvion, to the rent payable in respect of such land, and to the rights of mortgagees and lessees to alluvial increments to the lands comprised in their mortgages and leases. These matters, it is thought, are or may be more fitly provided for by special enactments. The Bill is also silent as to avulsion, an event which, though provided for in Bengal Regulation XI of 1825, is said never to occur in any part of British India.

SIMLA;
September 6th, 1878.

WHITLEY STOKES.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

Bill to define and amend the law relating to alluvion, islands and abandoned river-beds.

(Statement of Objects and Reasons.)

Govt. C. B. Press, Simla.—No. 263 L. D.—3-10-78—140.

IV.—Abandoned River-beds.

Sutherland's W. R. 1864, p. 103.

Right to abandoned river-beds.

8. If a river, whether navigable or not, suddenly forms a new bed, abandoning its ancient bed, the ancient bed is supposed to be divided by what was the thread of the stream immediately before the abandonment, and the owners of the ancient banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the ancient bed:

Provided that when the ancient bed is proved to have been, immediately before the abandonment, the property of the Crown or of a private person, it shall continue to be the property of the Crown or of such person, as the case may be.

V.—Miscellaneous.

Power to declare "main-stream," "dry season" and "thread of the stream."

9. The Local Government may, from time to time, declare, with reference to any river, or any part of any river,—

(*a*) what shall be deemed to be, for the purposes of this Act, the "main-stream" and the "dry season:" and

(*b*) which of the said definitions of "thread of the stream" shall be deemed to be in force.

Every such declaration shall be published in the official Gazette, and shall thereupon have the force of law.

In the absence of a declaration under clause (*b*) as to any river or part thereof, the first of the said definitions of "thread of the stream" shall be deemed to be in force with reference to such river or part.

Savings.

10. Nothing herein contained shall—

(*a*) affect any law relating to the assessment of land-revenue or to the enhancement or abatement of rent; or

(*b*) confer on any owner of a bank or shore in respect of which he is hereby declared to be entitled to alluvial land, to an island or to an abandoned river-bed any title to such land, island or river-bed better than that which he has to the bank or shore; or

Bombay Revenue Code, s. 104, clause (3).

(*c*) enlarge any holding granted by Government, the area of which has been fixed by any sanad or other document executed under the authority of Government; or

(*d*) authorize any acts of private persons done in order to divert currents or cause accretions; or

Ben. Regn. XI of 1825, s. 5.

(*e*) authorize any encroachments by private persons on the beds or channels of navigable rivers; or

Ben. Regn. XI of 1825, s. 5.

(*f*) prevent any officer of Government duly empowered in this behalf from removing obstacles which appear to him to interfere with the safe and customary navigation of such rivers, or which obstruct the passage of boats by tracking on the banks of such rivers or otherwise; or

(*g*) prevent any officer of Government duly empowered in this behalf from regulating the direction and flow of such rivers and the preservation and distribution of their waters.

And nothing herein contained shall affect any clear, definite and immemorial local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Panjáb Land-Revenue Act, 1871, section 16) the burden of proving such usage shall lie on the person alleging it.

Local usage.

Burden of proof.

11. All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four, five and eight, and not vesting under any of the provisions hereinbefore contained, shall vest in the Crown.

Right of Crown to alluvial lands, &c., not hereinbefore provided for.

THE SCHEDULE.

(*a*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IV of 1872...	Panjáb Laws Act ...	So much as relates to Bengal Regulation XI of 1825.
XX of 1875...	Central Provinces Laws Act	Ditto.
XVIII of 1876	Oudh Laws Act ...	Ditto.

(*b*). BENGAL REGULATION.

Number and year.	Subject.	Extent of repeal.
XI of 1825...	Alluvion	The whole.

(*c*). BENGAL ACT.

Number and year.	Subject.	Extent of repeal.
IV of 1868	Amending Act IX of 1847	Sections 2 and 4.

(*d*). RULES.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

A

BILL

TO

Define and amend the law relating to alluvion, islands and abandoned river-beds.

WHEREAS it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows:—

Preamble.

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Alluvion Act, 1879."

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Repeal of enactments.

2. The Acts, Regulation and Rules mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act.

Interpretation-clause.

3. In this Act—

"island" includes ~~a sandbar and any other accumulation of land, it also includes~~ land arising in a river or lake, submerged in the wet season and visible only in the dry season; but it excludes land arising in tidal rivers, tidal lakes or the sea, submerged by the ~~(ordinary)~~ flow of the tide ~~and visible only at low water~~;

~~Contra~~ 4 W. R. 41.
14 W. R. 352.

17 W. R. C. R. 173.

"thread of the stream" means (*a*) the middle line of th during the dry season, or (*b*) the what are the shores on each at its average height, neith shrunk by drought, or (c particular channel in w o arises;

Angell, 6th ed., p. 16, note 2.

"o case of a bank or shore tenure, the Crown: in the case or shore forming part of land situate in the Presidency of Bombay and wholly or partially exempt from the payment of land-revenue, or held under a grant or lease fixing the Government demand in respect thereof in perpetuity, the holder of such land; and in the case of a bank or shore held by a village community in the Panjáb, such community;

3 W. R. 95.
6 Ben. 343.

"sea" includes bay, inlet, creek and arm of the sea

and a channel is said to be "fordable" when it does not exceed five feet in depth in the dry season and throughout the twenty-four hours.

II.—Alluvion.

Right to alluvial land on bank or shore.

4. Where, from natural causes, land forms gradually on the bank of a river or on the shore of the sea, of a lake, or of an island, either by accumulation of material or by recession of the river, sea or lake, the owner of the bank or shore shall be entitled to the land so formed:

Ben. Reg. XI of 1825, s. 4.

As to lakes, see Angell § 59.

Ben. Act IV of 1868, s. 2.

Provided that, where the land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed.

Lopez v. *Muddun Thákur*, 5 B. L. R. 521.

III.—Islands.

Right to islands where channel is not fordable.

5. Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, if when the island is first formed, the channel between the bank or shore and such island is not fordable at any point, the Crown is entitled to such island:

Ben. Act IV of 1868, s. 4.

Provided that, where the island is formed on a site of which a private person is proved to be the owner, such person is entitled to the island.

Right to other islands.

6. If, when an island is first formed as aforesaid in a river, the sea or a lake, the channel between the bank or shore and such island is fordable at any point, the following rules shall take effect (namely):

Contra 9 W. R. 401, 12 Moore I. A. 136.

(*a*) Where the island is formed in the sea or a lake, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake opposite the island:

(*b*) Where the island is formed in a river and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on that side are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island:

Angell, *Watercourses*, 6th edition, p. 49, citing Shaw, C. J.

(*c*) Where the island is formed in a river and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the river opposite the island:

Angell, *ubi supra*. Kent. Comm., 11th edition, III., 542.

(*d*) Provided that, where the island is formed on a site of which a private person is proved to be the owner, such person is entitled to the island.

Explanation.—"Frontage" means the right line connecting the corners of each holding where they strike the sea, lake or river, and the frontage is "opposite" the island when a perpendicular erected at any point thereof in the plane of the sea, lake or river, intersects the island.

Islands formed by division of rivers.

7. If a river in forming a new arm divides and surrounds land belonging to the owner of the bank, and thereby forms an island, such owner is entitled to the island.

1878. 0.365 7.

From The Commissioner

To Nundydroog Division

Secretary to Chief Commissioner,
General Department.

15

Dated 13th November

Despatched

Received 15th "

ENCLOSURES NO. 2

General No. 350 } 1878–79.
No.

Sir,

Adverting to your No. 5735/498 of the 22nd Ultimo, forwarding for opinion copy of Bill to define and amend the Law relating to Alluvion islands, and abandoned river beds, I have the honor to state that the provisions of the Bill seem suitable, and that Mr Richetts, and Mr Krishnien for whom the Bill was circulated for opinion concur in this view.

2

15/11

2. The Bill and State-
ment of objects and
reasons are herewith
returned.

I have the honor to be
Sir
Your most obed.t Servant

[signature]
Com.r Mutiny

IV.—Abandoned River-beds.

Sutherland's W. R. 1864, p. 103.

Right to abandoned river-beds.

8. If a river, whether navigable or not, suddenly forms a new bed, abandoning its ancient bed, the ancient bed is supposed to be divided by what was the thread of the stream immediately before the abandonment, and the owners of the ancient banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the ancient bed:

Provided that when the ancient bed is proved to have been, immediately before the abandonment, the property of the Crown or of a private person, it shall continue to be the property of the Crown or of such person, as the case may be.

V.—Miscellaneous.

Power to declare "main-stream," "dry season" and "thread of the stream."

9. The Local Government may, from time to time, declare, with reference to any river, or any part of any river,—

(*a*) what shall be deemed to be, for the purposes of this Act, the "main-stream" and the "dry season:" and

(*b*) which of the said definitions of "thread of the stream" shall be deemed to be in force.

Every such declaration shall be published in the official Gazette, and shall thereupon have the force of law.

In the absence of a declaration under clause (*b*) as to any river or part thereof, the first of the said definitions of "thread of the stream" shall be deemed to be in force with reference to such river or part.

Savings.

10. Nothing herein contained shall—

(*a*) affect any law relating to the assessment of land-revenue or to the enhancement or abatement of rent; or

(*b*) confer on any owner of a bank or shore in respect of which he is hereby declared to be entitled to alluvial land, to an island or to an abandoned river-bed any title to such land, island or river-bed better than that which he has to the bank or shore; or

Bombay Revenue Code, s. 104, clause (3).

(*c*) enlarge any holding granted by Government, the area of which has been fixed by any sanad or other document executed under the authority of Government; or

(*d*) authorize any acts of private persons done in order to divert currents or cause accretions; or

Ben. Regn. XI of 1825, s. 5.

(*e*) authorize any encroachments by private persons on the beds or channels of navigable rivers; or

Ben. Regn. XI of 1825, s. 5.

(*f*) prevent any officer of Government duly empowered in this behalf from removing obstacles which appear to him to interfere with the safe and customary navigation of such rivers, or which obstruct the passage of boats by tracking on the banks of such rivers or otherwise; or

(*g*) prevent any officer of Government duly empowered in this behalf from regulating the direction and flow of such rivers and the preservation and distribution of their waters.

Local usage.

And nothing herein contained shall affect any clear, definite and immemorial local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Panjáb Land-Revenue Act, 1871, section 16) the burden of proving such usage shall lie on the person alleging it.

Burden of proof.

Right of Crown to alluvial lands, &c., not hereinbefore provided for.

11. All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four, five and eight, and not vesting under any of the provisions hereinbefore contained, shall vest in the Crown.

THE SCHEDULE.

(*a*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
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XVIII of 1876	Oudh Laws Act ...	Ditto.

(*b*). BENGAL REGULATION.

Number and year.	Subject.	Extent of repeal.
XI of 1825...	Alluvion	The whole.

(*c*). BENGAL ACT.

Number and year.	Subject.	Extent of repeal.
IV of 1868	Amending Act IX of 1847	Sections 2 and 4.

(*d*). RULES.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Define and amend the law relating to alluvion, islands and abandoned river-beds.

(*Mr. Stokes.*)

G. C. B. Press, Simla,—No. 266, L. D.—3-10-78—140.

25

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTME

ANNEXURE

TO

Bill to define and amend the law rela
to alluvion, islands and abando
river-beds.

(Statement of Objects and Reasons.)

Govt. C. B. Press, Simla,—No. 263 L. D.—3-10-78—14

STATEMENT OF OBJECTS AND REASONS.

THIS Bill is intended to form a chapter of the Indian Civil Code, and its object is to state, in a concise, accurate and accessible form, the law relating to the ownership of alluvial lands, islands and abandoned river-beds. In Madras, Bombay and Burma there is no statutory law on the subject: in Sindh there are only some executive rules which are held to have the force of law: in the rest of British India the law is contained partly in legal text-books, partly in the Bengal Regulation XI of 1825, and the Bengal Act IV of 1868, sections 2 and 4, but chiefly in the numerous decisions of the High Courts and the Judicial Committee of the Privy Council with which the former enactment is encrusted.

Regulation XI of 1825 provides rules for land gained from a river or the sea by gradual accession; for avulsion; for islands formed in navigable rivers and the sea; for islands formed in "small and shallow rivers, the beds of which with the jalkar [or] right of fishery may have been heretofore [*i.e.*, before 26th May, 1825] recognised as the property of individuals." But it does not provide for the case when an alluvial deposit takes place on a site of which, though it has been submerged, the ownership is ascertained. It declares that an island formed in a navigable river belongs to the adjoining proprietor or to the Crown, according as the channel between it and the adjacent land is fordable or unfordable. But it does not define "fordable;" nor state the time with reference to which the question of fordability or non-fordability is to be decided, nor show when an island in a tidal river or the sea can be said to be formed. It declares that an island formed in a navigable river shall, where the channel is fordable, be an accession to the land "of the person or persons whose estate or estates may be most contiguous to it." But this does not, apparently, provide for cases where the island is partly on one side and partly on the other of the thread of the stream, nor for cases where there are several riparian owners, and the island cannot be said to be nearer to the property of one than to that of another.

The Bill attempts to supply these defects as follows:—

It declares, in accordance with the decision of the Judicial Committee in *Lopez* v. *Muddun Thákur*, that when land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed. It declares that a channel is "fordable" when it does not exceed five feet in depth in the dry season and throughout the twenty-four hours; and when a channel which is not fordable when the island appears becomes fordable afterwards, it fixes the first appearance of the island as the date with reference to which the question of fordability or non-fordability is to be determined. The subsequent junction of the island to the main-land will thus not affect the right of the Crown. Lastly, it includes in the term "island" land arising in a river, submerged in the wet season and visible only in the dry, but excludes from that term land in a tidal river or the sea which is submerged by the ordinary flow of ~~the~~ tide ~~and visible only at low water~~.

As regards the rights of riparian owners to islands, the Bill applies the same rules to an island formed in the sea, a lake or a navigable river, when the channel between it and the adjacent land is fordable at any point, and to an island formed in a river which is not navigable. These rules are as follows:—

"Where the island is formed in the sea or a lake, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake opposite the island.

"Where the island is formed in a river and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on that side are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island.

"Where the island is formed in a river and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the river opposite the island."

And as the same definition of "thread of the stream" will not suit all the rivers in British India, or even all the parts of the same river, three definitions of this expression are given, and the Local Governments are empowered to declare which of them shall in each case be applicable.

The Regulation is also defective in not providing for the case of what Roman lawyers termed *agri limitati*. When land is granted by the State in a plot with a specified area, and such land is enlarged by alluvion, the increment should not become the property of the owner of the plot. The Bill (section 10, clause (*c*)) contains a provision to this effect, which, it is believed, will be especially useful in Bombay.

When a river suddenly forms a new course, abandoning its ancient bed, the Bill declares that the owners of the ancient banks are entitled to the ancient bed in proportion to their respective frontages. This is in accordance with the existing law (Suth. W. R., 1864, p. 103), and it seems less likely to encourage litigation than would be the provision (found in some systems) that the owners of the land newly occupied shall take the ancient bed, each in proportion to the land of which he has been deprived.

Where a bank or shore is held on raiyatwárí tenure, the Crown is, for the purposes of the Bill, to be deemed the riparian owner. The effect will be, in Madras and Burma, to continue the present practice, according to which the Government is, as a rule, entitled to alluvial lands and to islands arising in rivers. In the Bombay Presidency, where a bank or shore is wholly or partially exempt from revenue, or is held under a grant or lease fixing the Government demand in perpetuity, the holder will be deemed the riparian owner.

The Bill advisedly leaves untouched the law relating to the assessment of alluvial lands and lands diminished by diluvion, to the rent payable in respect of such land, and to the rights of mortgagees and lessees to alluvial increments to the lands comprised in their mortgages and leases. These matters, it is thought, are or may be more fitly provided for by special enactments. The Bill is also silent as to avulsion, an event which, though provided for in Bengal Regulation XI of 1825, is said never to occur in any part of British India.

SIMLA;
September 6th, 1878.

WHITLEY STOKES.

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1878. 9

From The Commissioner
Naga Division

To

Secretary to Chief Commissioner,
General Department.

Dated 18th November 1878
Despatched 19-11-78
Received 22-11-78

Section
File

ENCLOSURES NO.

General No. 665 } 1878-79.
Genl. No. 8

Sir,

In reply to your No. 5735 D. 498 dated the 22nd ultimo, forwarding for opinion a revised bill to define and amend the law relating to alluvion, diluvion and abandoned river-beds, I have the honor to state that I have noted the enlarged definitions, alterations and additions in the proposed bill, as also the omission of the clause regarding avulsion which appeared in the bill on which I expressed an opinion in my No. 207 dated 45

the 11th June last, and I consider that the present draft is in these respects an improvement on the former one.

I conclude that in Bijapur the riparian ownership will be determined under rules similar to those which apply to the Bombay Presidency.

I have the honour to be,
Sir,
Your most obedient Servt.

Commissioner
Nagar Division

Encl

No 55 O.L.

From

The Govt. Advt.

To.

The Secy. to the Ch. Comr. of Mysore

Mysore, the 30th Dec. 1878

Rec'd 2-Jan 1879.

Regd. Encls. No 1.

Ch. No 690
Govt. 93

Expressing his opinion on the Bill relating to Alienation &c. —

A reply to this has been already made. Please see No. 665 of 18th Nov last.

6-1-79.

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I.O. 690 / J. 93

Ashtagram Dy. Commissioner's Office
Mysore, 30th December 1878

To

The Secretary to the Chief
Commissioner of Mysore

Sir

I have the honor to acknowledge the receipt of your No. 5735/498 dated 22nd October 1878, forwarding for an Expression of my opinion Copy of a Bill relating to Alluvion &c., with a Statement of its objects and reasons.

An Act of the kind which embodies the different regulations and Executive rules on the Subject, may probably be desirable in other parts of India, and I see no objection to it being made applicable to this Province, tho' I doubt whether any Cases of the kind which the Act intends to meet have ever arisen, or are likely to arise. The Streams run in deep & rocky Channels with few changes, Except from Erosion of the Banks and the only questions that have occurred in my recollection are in Connection with the Cauvery, and were of a Political Character relating to the Boundary between the Territories of H.H. the Maha Rajah and of the British Govt. & to be settled by Evidence of occupation &c.

I have Consulted Mr. Sheshadri Iyer regarding the general provisions of the Bill and beg to Enclose Copy of Letter No. 287 of 2nd Instant, Containing his opinion on the Subject, but in my opinion, the modifications proposed by him seem scarcely necessary.

I have

The replies from the Deputy Commrs are enclosed.

I have the honor to be
Sir
Your most obedt. Servant.

Halsey
Commissioner
Asstt. Surgeon U.S.A.

37

Very Serious.

I have &c
(Sd) K. Sheshadri Iyer.
Jud. Asst & Comm.r
Mysore.

Deputy Commissioner's Office.
Dated Mysore, 5th Novr 1878.

No. 54-5.

To

The Commissioner
Ashtagram Division.

Sir

In reply to your Circular No. 319 dated 1st Instant, I have the honor to state that no Enactment that defines the rights to Alluvion Islands and abandoned river beds is advisable to meet circumstances as they arise.

I have &c
(Sd) C. P. Pearse.
Deputy Commissioner
Mysore District.

From.

The Dy Commr Hassan District.

No.

1073

The Commissioner Ashtagram D.

Dated 7th November 1878.

Sir.

In reply to your letter, Circ: No 319 of the 1st Instant, I have the honor to state that I have no opinion to offer, there being no abandoned river beds or islands in this District.

Office

I have &c
(Sd) E. Mathew
Dy Commr
Hassan Dist.

Mallay

Commissioner
(Sd) ... G.I.

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Jud. Asstt. Commissioner's Court.
Mysore, 2nd December 1878.

To

The Commissioner of the
Ashtagram Dt.

No. 487.

Sir,

I have the honor to return herewith the Bill relating to Alluvion Islands and abandoned river-beds and to state as follows my opinion upon a few of the questions involved in the proposed legislation.

The ownership to alluvial lands and Islands is dealt with in a satisfactory manner but that to abandoned river-beds might perhaps be dealt with upon a more just principle. When a river suddenly forms a new bed abandoning its ancient bed, Section 8 of the Bill vests the ownership of the ancient bed in the owners of the ancient Banks, but the persons that suffer by the sudden change in the course of the river are those whose lands are taken up by the new bed, and it would be just in every way to provide that they should be the owners of the abandoned bed in the proportion of their lands taken up by the new bed. There cannot be much difficulty in working such a rule, as the required apportionment can always be effected by means of actual measurement.

The Bill declares the Crown to be the owner of Banks and shores held on the Ryotwari tenure, and the effect of this is to vest in the Crown the absolute ownership to alluvial lands and

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and Islands formed at or opposite to such Banks or Shores. Without some restriction to the right of the Crown to dispose of the newly formed land, the rule in question would be attended with considerable inconvenience and hardship. It is true that under the Ryotwari system, the Crown is the owner of all Lands, but for all practical purposes, the Ryotwari holder is as well the owner, subject only to the payment of the land tax, and would be simply just to give a similar Conditional ownership to him, as regards alluvial Lands and Islands. It would be regarded as unjust if in any case the Ryotwari holder of a Bank is refused the option to hold also the new land near his holdings; ordinarily this option would not be refused to him, but it is proper to provide expressly against the possibility of such refusal.

Another matter to which I would refer is the rule contained in clause (c) section 10 of the Bill. Its effect is that where land of a fixed area has been granted by Government, the holder of such land should not have the ownership to any alluvial lands or Islands which might be formed at or near his holding. It is not clear why owners under Government grants should be in a different position from other owners, and if we remember that the area specified in a grant is very often intended as one of the means whereby the land granted might be identified, the inexpediency of depriving the grantee of the ownership to alluvial lands, Islands and abandoned river-beds become

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